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# Appeal Decision

Site visit made on 11 September 2019

**by Stuart Willis BA Hons MSc PGCE MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 09 October 2019**

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**Appeal Ref: APP/T0355/W/19/3231492**

**Land South of Holyport Allotments, Gays Lane, Bray**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mrs Victoria Egarr of Little Me Pre-School against the decision of Council of the Royal Borough of Windsor and Maidenhead.
  - The application Ref 19/00362, dated 14 February 2019, was refused by notice dated 30 May 2019.
  - The development proposed is change of use from agricultural to (D1) education with associated parking and boundary treatment.
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## Decision

1. The appeal is dismissed.

## Procedural Matter

2. The National Planning Policy Framework (Framework) states that the weight given to relevant policies in emerging plans should be according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency of the plan with the Framework (paragraph 48).
3. While the Royal Borough of Windsor and Maidenhead Local Plan Borough Local Plan 2013 - 2033 Submission version (emerging plan) has been submitted for examination, I am not aware of any unresolved objections or the exact stage it has reached. Consequently, it carries limited weight in my decision.

## Main Issues

4. The main issues of the appeal are:
  - Whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
  - The effect on the character and appearance of the area;
  - The effect of the proposed development on highway safety, with particular regard to traffic flows; and
  - If the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other

considerations, so as to amount to the very special circumstances necessary to justify the development.

## **Reasons**

### *Whether Inappropriate Development*

5. The appeal site is situated in the Green Belt. The Framework outlines that the construction of new buildings, other than in connection with a small number of exceptions, should be regarded as inappropriate in the Green Belt (paragraph 145). Inappropriate development according to the Framework is harmful to the Green Belt and should not be approved except in very special circumstances.
6. The Framework includes an exception for development in connection with material changes in the use of land. This and the exception for engineering operations are not inappropriate development as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it (paragraph 146).
7. Policies GB1 and GB2 of The Royal Borough of Windsor and Maidenhead Local Plan (LP) set out the exceptions to inappropriate development and include engineering operations and material changes of use. This is providing they maintain the openness of the Green Belt and do not conflict with the purposes of including land in it. The LP predates the publication of the Framework and the relevant policies are not entirely consistent with the Framework. I give this conflict considerable weight.
8. Policy SP5 of the emerging plan states that proposals will be permitted in the Green Belt where they are consistent with the exceptions listed in national planning policy. In addition, they should be of high-quality design and protect ecological value.
9. The term 'building' is not defined in the Framework. The Town and Country Planning Act 1990 defines a building as including any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building. Therefore, the proposed fence would fall within that definition. None of the exceptions in the list of exclusions at paragraph 145 of the Framework apply to the fence. Therefore, regardless of the colour, design or size of the fence and its position behind shrubbery, it would be inappropriate development.
10. The Framework indicates that openness is an essential characteristic of the Green Belt. Openness in terms of the Green Belt has a spatial aspect as well as a visual aspect.
11. Activities within the woodland area would be largely screened by the vegetation itself. The proposed bell tent and other tarpaulins would only be on the site at certain times and would be removed and stored off site at the end of that same day. Nonetheless, when present they would have impacts on openness.
12. The proposed access, parking area and ancillary facilities would be located in a more open area and clearly visible from the public right of way running through the site. Moreover, there would be glimpsed views over and through the roadside vegetation and gates from the bridleway. The aim of the business is to have only a small number of vehicles on the parking area, for short periods and a weave mesh to allow grass to grow through. However, when present the

vehicles, including the welfare facilities van would have a spatial and visual presence.

13. Consequently, in both spatial and visual terms the proposal would have a greater impact on the openness of the Green Belt than the existing situation. Although the harm would be small, this would be contrary to the Framework where it states an essential characteristic of Green Belts are their openness.
14. Therefore, when judged against the wording of national and local policy the proposal would be inappropriate development in the Green Belt which, according to the Framework is harmful. It would conflict with Policies GB1 and GB2 of the LP, Policy SP5 of the emerging plan and the Framework as it would fail to assist in safeguarding the countryside from encroachment, one of the 5 purposes of the Green Belt and would go against the fundamental aim of Green Belt policy to keep land permanently open.

#### *Character and Appearance*

15. There are existing properties along the bridleway and agricultural uses that would already generate a certain level of vehicular traffic. During my site visit, which I appreciate is only a snapshot in time, there were pedestrians and horse riders passing the site with occasional vehicles. The activities at the site would be limited to certain times of day, week and year and there are allotments near the site. Furthermore, the intention is to operate a phased drop-off/pick-up system that would result in a maximum of 4 vehicle movements every half hour.
16. However, I have not been presented with a formal mechanism to ensure this or any compelling information regarding existing movements along the bridleway. On the basis of the evidence presented to me, these increases would be at odds with the quiet rural character of the site and along the bridleway at present.
17. The site is listed as Priority Habitat Deciduous Woodland in the National Forest Inventory 2014 and is said to contain veteran trees. While an annual Visual Tree Assessment/Tree Hazard Survey will be carried out, one has not been provided to me. Only around one third of the woodland is said to be required for the school. Nevertheless, the details before me do not make it clear what area this is or how the use of the whole area could be prevented. While I note the Woodland Management Plan, there is insufficient evidence before me to demonstrate that the proposed activities could take place without an adverse effect on the trees.
18. The proposed parking and drop off area would be treated with an open weave mesh matting to allow grass to grow through. The Tree Survey shows that the matting would be within the root protection area of certain trees. No evidence has been submitted to demonstrate that the works could take place without an adverse effect on the roots. In the absence of this, it is not possible to determine that the scheme would not result in damage to trees and their long-term health.
19. Separately from considerations of openness, the Council consider the tents and fence would not have a harmful impact on the character and visual amenity of the site itself or the locality. Given their scale and limited use I see no reason to reach a different finding.

20. Notwithstanding this, the proposal would result in unacceptable impacts on the character and appearance of the area. The proposal would fail to accord with Policy DG1 and N6 of the LP. These, amongst other things, require details of tree protection measures to allow the retention of existing suitable trees and that the traffic generated by developments should not have an unacceptable effect on the environment of the locality. In addition, it would be contrary to Policy NR2 and SP3 of the emerging plan which state that ancient or veteran trees are to be safeguarded from harm or loss and developments should respect and enhance the local character.
21. It would also be contrary to the Framework where it states development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists.

#### *Highway Safety*

22. It is intended that staff would travel together with attendees likely to be local and assumed that some would arrive on foot. Given the narrowness of the lane, lack of dedicated footways and street lighting along with limited verges for refuge, the route would be uninviting for pedestrians at certain times of the day and year. Therefore, this would discourage them walking to the site.
23. Gays Lane already serves a number of residential properties and agricultural fields. However, I have not been provided with any compelling information regarding existing movements along the bridleway. There are two roads to the north to access the lane which may spread the traffic. However, vehicles could arrive at the same time and the lane is blocked off to through traffic to the south of the site. Moreover, no formal mechanism has been presented to me to ensure staggering of drop off/collection times would be achieved. Therefore, it would be possible for several vehicles to arrive/leave simultaneously.
24. A passing bay and second access are proposed. However, on the basis of the information before me, this would not be sufficient to alleviate the conflict between different vehicles and other uses of the bridleway. This is due to the distance between the site and the roads to the north and the characteristics of the lane itself referred to above.
25. I acknowledge there can be different transport solutions in rural locations and the number of children proposed at the site. Nevertheless, on the basis of the details before me the proposal would have an adverse effect on highway safety with regard to impacts on traffic flows. It would be contrary to Policy T5 of the LP and Policy IF2 of the emerging plan, where they expect proposals to comply with highway design standards and optimise traffic flows.

#### *Other Considerations*

26. I appreciate that a site of this type is required for the proposal and may not be easy to find. However, no specific details of any search have been provided to me. The ethos of the school with regard to the natural environment is acknowledged as is the Outstanding OFSED status of the existing school and comments regarding the staff and benefits to children from this type of learning. The proposal would also provide support for the community, rural economy and be a source of income for the farm. However, given the scale of the proposal the contribution would be small, and this attracts limited weight.

27. I note support for the proposal from third parties. However, this in itself is not a ground for granting planning permission unless founded upon valid planning reasons. As such, this carries little weight.
28. There are limited details before me of issues arising from public use of the site, littering or anti-social behaviour. Moreover, I did not see any noticeable evidence of this at my visit. Therefore these factors attract modest weight.
29. No clear evidence of fallback positions for erecting fencing under permitted development rights or the use of the site in ways not requiring planning permission have been provided. While the fence would have a safety purpose, it has not been demonstrated that this is the only way to achieve this aim. Therefore, this carries little weight.
30. The refusal reasons do not relate to matters such as flooding or impacts on designated heritage assets. Nonetheless, a lack of identified harm is a neutral factor.
31. The scheme has been amended from the pre-application advice in an attempt to remove the concerns raised at that time. However, I have found harm from the scheme before me.

### **Conclusion**

32. The proposal would be inappropriate development in the Green Belt and the Framework establishes that substantial weight should be given to any harm to the Green Belt. It would also lead to a small loss of openness to the Green Belt, harm to the character and appearance of the area and to highway safety. The other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist. Furthermore, the proposal would be contrary to Policies GB1, GB2, DG1, T5 and N6 of the LP, Policies SP5, SP3, IF2 and NR2 of the emerging plan as well as the Framework.
33. Therefore, for the reasons given I conclude that the appeal should be dismissed.

*Stuart Willis*

INSPECTOR